

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2943

Introduced by Assembly Member Pavley

February 20, 2004

An act to ~~to~~ add Article 10.4.1 (commencing with Section 25214.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2943, as amended, Pavley. Mercury pollution prevention.

(1) Existing law, the California Mercury Reduction Act of 2001, requires any mercury-containing vehicle light switch that is removed from a vehicle to be subject to the regulations adopted by the Department of Toxic Substances Control regarding the management of universal waste. Existing law prohibits any person, except as specified, from selling at retail or supplying a mercury fever thermometer to a consumer or patient in the state, except by a prescription. Existing law also prohibits any person from manufacturing, offering for sale or use, or distributing for promotional purposes in this state a mercury-added novelty and prohibits any school from purchasing, for use in the classroom, specified devices and materials containing mercury, except measuring devices. Existing law, the Dry Cell Battery Management Act, regulates the sale of specified batteries and, among other things, prohibits the sale of dry cell batteries containing specified amounts of mercury. A violation of the hazardous waste control laws is a crime.

This bill would enact the “Mercury Pollution Prevention Act of 2004” and would prohibit any person, on and after June 1, 2005, from

offering a mercury-added product for final sale or use or distributing a mercury-added product for promotional purposes in the state, unless the manufacturer of the mercury-added product notifies the department in writing. The bill would require the notification to include specified information required by the department. The bill would require the manufacturer to update and revise the information in the notification whenever there is significant change in the information ~~or when requested by the department.~~

The bill would also prohibit a person from offering a mercury-added product for final sale or use or distributing a mercury-added product for promotional purposes if the mercury content of the product exceeds specified limits, in accordance with a schedule that would take effect January 1, 2006. The bill would decrease the specified limits on and after January 1, 2007, and also on and after January 1, 2008. The bill would exempt, from those limits, a fluorescent lamp and a mercury-added product for which the manufacturer submits a specified notification to the department that the level of mercury or mercury compounds contained in the product is required to comply with federal or state health or safety requirements.

The bill would authorize a manufacturer of a mercury-added product to apply to the department for an exemption from the mercury-content limits for not more than 2 years, pursuant to a specified procedure. The bill would require the manufacturer to pay a fee set by the department to pay for the costs of reviewing and approving an exemption. The bill would require the department to deposit the fee in the Hazardous Waste Control Account and would authorize the department to expend the fee revenues, upon appropriation by the Legislature, to review and approve an exemption. The bill would authorize the department to grant a manufacturer an exemption from those concentration limits, if the department makes certain findings. The department would also be authorized to renew an exemption upon the reapplication by the manufacturer and a finding by the department that the mercury-added product meets the eligibility criteria and the manufacturer is in compliance with the conditions of its original exemption.

~~The bill would prohibit any person from offering a mercury-added product for final sale or use or distributing a mercury-added product for promotional purposes in the state unless all of the mercury added to the product comes from recycled mercury.~~

The bill would also prohibit any person, on and after January 1, 2006, from offering for sale, *or use* or distributing for promotional purposes,

a mercury-added product manufactured after January 1, 2006, unless both the product and its packaging are labeled, in accordance with the ~~regulations adopted by the department.~~ *labeling requirements of another state that is member of*

~~The bill would authorize the department to join the Interstate Mercury Education and Reduction Clearinghouse (IMERC) to assist in carrying out the requirements of the bill.~~

Since a violation of the requirements and prohibitions of the bill would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.4.1 (commencing with Section
2 25214.50) is added to Chapter 6.5 of Division 20 of the Health and
3 Safety Code, to read:

4
5 Article 10.4.1. Mercury Pollution Prevention Act of 2004

6
7 25214.50. This article shall be known, and may be cited, as the
8 “Mercury Pollution Prevention Act of 2004.”

9 25214.51. (a) The Legislature finds and declares all of the
10 following:

11 (1) Mercury is a persistent and toxic pollutant that
12 bioaccumulates in the environment and in the food chain.

13 (2) Due to the bioaccumulation of mercury and other
14 contaminants in fish, the California Environmental Protection
15 Agency has issued a warning advising that adults, and women who
16 are pregnant or who may become pregnant, should limit their fish
17 intake from several state waterways.

(3) By participating in ~~already-existing~~ *existing* interstate collaborative efforts, the state can pursue a pollution prevention approach to mercury reduction in the most cost effective manner.

(b) This article does not apply to any of the following:

(1) A major appliance subject to Article 10.1 (commencing with Section 25211).

(2) A mercury-containing motor vehicle light switch subject to Article 10.2 (commencing with Section 25214.5).

(3) A package, packaging component, or product subject to Article 10.3 (commencing with Section 25214.11).

(4) A dry cell battery subject to Division 12.2 (commencing with Section 15000) of the Public Resources Code.

(5) A mercury-added novelty or ~~mercury fever~~ a thermometer subject to Chapter 5 (commencing with Section 15025) of Division 12.2 of the Public Resources Code.

25214.52. For purposes of this article, the following definitions apply:

(a) “Fabricated mercury-added product” means a mercury-added product that consists of a combination of individual components that combine to make a single unit, including, but not limited to, a mercury-added measuring device, lamp, or switch.

(b) “Formulated mercury-added product” means a mercury-added product that is a chemical product, including, but not limited to, a laboratory chemical, cleaning product, cosmetic, pharmaceutical, or coating material, that is sold as a consistent mixture of chemicals.

(c) “IMERC” means the Interstate Mercury Education and Reduction Clearinghouse, which is an umbrella organization designed to assist states in their implementation of mercury reduction laws and programs to remove mercury from consumer products, the waste stream, and the environment.

(d) “Manufacturer” means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that produces a mercury-added product in this state or a person who distributes a mercury-added product in this state. For purposes of this article, if the product is a multicomponent mercury-added product, “manufacturer” means the last manufacturer to produce or assemble the product in this state and if the multicomponent product is not produced in this

1 state, “manufacturer” means the person who distributes the
2 product in this state.

3 (e) “Mercury-added product” or “product” means a product,
4 commodity, chemical, or a product with a component that contains
5 mercury or a mercury compound intentionally added to the
6 product, commodity, chemical, or component to provide a specific
7 characteristic, appearance, or quality or to perform a specific
8 function or for any other reason. “Mercury-added product”
9 includes both a formulated mercury-added product and a
10 fabricated mercury-added product.

11 ~~25214.53. The department may join the Interstate Mercury~~
12 ~~Education and Reduction Clearinghouse (IMERC) to assist the~~
13 ~~department in carrying out the requirements of this act.~~

14 25214.54. (a) Except as provided in subdivision (b), on and
15 after June 1, 2005, a person shall not offer a mercury-added
16 product for final sale or use in this state, or distribute a
17 mercury-added product for promotional purposes in the state,
18 unless the manufacturer of the mercury-added product notifies the
19 department in writing in accordance with this section. The notice
20 provided by the manufacturer shall include the information
21 required by the department, including, but not limited to, all of the
22 following information:

23 (1) A brief description of the mercury-added product to be
24 offered for sale, use, or distribution.

25 (2) The amount of and purpose for mercury in each unit of the
26 mercury-added product.

27 (3) The total amount of mercury contained in all
28 mercury-added products manufactured by the manufacturer.

29 (4) The name and address of the manufacturer, and the name,
30 address, and telephone number of a contact.

31 (b) If a federal law that regulates a mercury-added product
32 subject to this section preempts the state from requiring a notice
33 requirement pursuant to this section, the mercury-added product
34 is exempt from this section.

35 ~~(c) (1) The department may authorize a manufacturer to~~
36 ~~supply the information required by subdivision (a) for a category~~
37 ~~of mercury-added product, instead of an individual~~
38 ~~mercury-added product.~~

39 ~~(2)~~

1 (c) A manufacturer shall update and revise the information in
2 the notification required by this section whenever there is
3 significant change in the information ~~or when requested to do so~~
4 ~~by the department.~~

5 ~~(3) The department may adopt regulations to define specific~~
6 ~~requirements for the content and submission of the notification~~
7 ~~required by this section.~~

8 25214.55. (a) Except as provided in this section, a person
9 shall not offer a mercury-added product for final sale or use in the
10 state or distribute a mercury-added product for promotional
11 purposes in the state if the mercury content of the product exceeds
12 any of the following limits, in accordance with the following
13 schedule:

14 (1) On and after January 1, 2006, until December 31, 2006, one
15 gram (1000 milligrams), if the mercury-added product is a
16 mercury-added fabricated product and 250 parts per million
17 (ppm), if the mercury-added product is a mercury-added
18 formulated product.

19 (2) On and after January 1, 2007, until December 31, 2007, 100
20 milligrams if the mercury-added product is a mercury-added
21 fabricated product and 50 parts per million (ppm) if the
22 mercury-added product is a mercury-added formulated product.

23 (3) On and after January 1, 2008, 10 milligrams if the
24 mercury-added product is a mercury-added fabricated product and
25 10 parts per million (ppm) if the mercury-added product is a
26 mercury-added formulated product.

27 (b) If a product subject to this section contains one or more
28 mercury-added products as a component, the limits on total
29 mercury content specified in subdivision (a) apply only to each
30 component part and not to the entire product.

31 (c) If a product contains more than one mercury-added product
32 as a component, the limits on total mercury content specified in
33 subdivision (a) apply individually to each component and not to
34 the sum of the mercury in all of the components.

35 (d) Both of the following mercury-added products are exempt
36 from this section:

37 (1) A fluorescent lamp.

38 (2) (A) A mercury-added product for which the manufacturer
39 submits the notification required in subparagraph (B) that the level
40 of mercury or mercury compounds contained in the product is

1 required to comply with federal or state health or safety
2 requirements.

3 (B) A manufacturer requesting an exemption pursuant to
4 subparagraph (A) shall notify the department, in writing, and
5 provide satisfactory evidence for the claim of exemption.

6 (e) (1) A manufacturer of a mercury-added product may apply
7 to the department for an exemption for not more than two years
8 from the limits on total mercury content set forth in subdivision
9 (a), for a mercury-added product or category of products, pursuant
10 to this subdivision.

11 (2) An application for an exemption pursuant to this
12 subdivision shall include all of the following information:

13 (A) Documentation for the basis for the requested exemption
14 or renewal of exemption.

15 (B) A description of how the manufacturer will ensure that a
16 system exists for the proper collection, transportation, and
17 processing of the mercury-added product at the end of its useful
18 life.

19 (C) Documentation of the readiness of all necessary parties to
20 perform as intended in the planned system.

21 (3) The manufacturer shall pay a fee set by the department to
22 pay for the costs of reviewing and approving an exemption. The
23 department shall deposit the fee in the Hazardous Waste Control
24 Account and may expend the fee revenues, upon appropriation by
25 the Legislature, to review and approve an exemption.

26 (f) The department may grant an exemption pursuant to
27 subdivision (e), with any modification or condition deemed
28 necessary by the department, for a mercury-added product or a
29 category of mercury-added products, if the department makes all
30 of the following findings:

31 (1) The department finds that a system exists for the proper
32 collection, transportation, and processing of the mercury-added
33 product. This system may include, but is not limited to, a direct
34 return of a waste product to the manufacturer, an industry or trade
35 group supported collection and recycling system, or another
36 similar private or public sector effort.

37 (2) The department finds all of the following criteria are met:

38 (A) The use of the mercury-added product is beneficial to the
39 environment or protective of public health or protective of public
40 safety.

1 (B) There is no technically feasible alternative to the use of
2 mercury in the mercury-added product.

3 (C) There is no comparable nonmercury-added product
4 available at reasonable cost.

5 (g) Before issuing an exemption pursuant to subdivision (f), the
6 department shall consult with IMERC to promote consistency. The
7 department shall avoid, to the extent feasible, inconsistency in the
8 implementation of this section.

9 (h) The department may renew an exemption issued pursuant
10 to subdivision (f), upon the reapplication by the manufacturer and
11 a finding by the department that the mercury-added product meets
12 the eligibility criteria specified in subdivision (f) and a finding that
13 the manufacturer is in compliance with the conditions of the
14 original exemption. The department may renew an exemption one
15 or more times and each renewal may be for a period not longer than
16 two years.

17 ~~25214.56. A person may not offer a mercury-added product~~
18 ~~for final sale or use in this state or distribute a mercury-added~~
19 ~~product for promotional purposes in this state unless all of the~~
20 ~~mercury added to the product comes from recycled mercury.~~

21 25214.57. (a) On and after January 1, 2006, a person may not
22 offer a mercury-added product manufactured after January 1,
23 2006, for sale or use in this state, or distribute for promotional
24 purposes in this state a mercury-added product manufactured after
25 January 1, 2006, unless both the product and its packaging are
26 ~~labeled in accordance with the regulations adopted by the~~
27 ~~department.~~

28 (b) ~~A manufacturer is in compliance with the requirements of~~
29 ~~this section if the manufacturer is in compliance with the labeling~~
30 ~~labeled in accordance with the labeling~~ requirements of another
31 state, if that state is a member of IMERC.

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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